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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,538	01/29/2002	Dale Knoop	1799	5786
28065 SPRINT 6391 SPRINT PARKWAY KSOPHT0101-Z2100 OVERLAND PARK, KS 66251-2100			EXAMINER PHAN, HUY Q	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 05/18/2009	DELIVERY MODE PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DALE KNOOP

Appeal 2008-5291
Application 10/059,538
Technology Center 2600

Decided:¹ May 18, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO and
ROBERT E. NAPPI, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is a decision on appeal under 35 U.S.C. § 6(b) of the final rejection of claims 1 through 11, 18 through 22, 24, and 25. Claims 12 through 17 and 23 have been canceled.

We reverse the Examiner's rejections of these claims.

INVENTION

The invention is directed towards a method for use in streaming media to a user's wireless handset based upon the handset's capabilities. In one embodiment the list of media content made available to the user is based in part upon specifications input by the user. See page 5 of Appellant's Specification. Claim 1 is representative of the invention and reproduced below:

1. A method of selecting a transmission mode for streaming media content to a wireless handset, the method comprising:
 - presenting on the wireless handset a set of choices indicating transmission modes for streaming media content to the wireless handset, wherein the set of choices is tailored based on at least one presentation capability of the wireless handset;
 - receiving from a user of the wireless handset an indication of a transmission mode selected from the set of choices;
 - sending from the wireless handset to a media server an indication of the selected transmission mode;
 - receiving a list of available media content, wherein all media content in the list of available media content is compatible with the indicated transmission mode;
 - receiving from a user a selection of one of the media content in the list of available media content; and
 - receiving into the wireless handset the selected media content streamed from the media server at the selected transmission mode.

REFERENCES

Mosher	US 2002/0099790 A1	Jul. 25, 2002
Gourraud	US 2003/0079020 A1	Apr. 24, 2003 (filed Oct. 23, 2001)
Oishi	US 6,779,195 B2	Aug. 17, 2004 (filed Jun. 7, 1999)
Iida	US 6,952,279 B1	Oct. 4, 2005 (filed may 20, 1999)

REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 11 and 18 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Mosher and Gourraud. The Examiner's rejection is on pages 3 through 7 of the Answer.²

The Examiner has rejected claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Mosher, Gourraud, and Iida. The Examiner's rejection is on page 8 of the Answer.

The Examiner has rejected claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Mosher, Gourraud, and Oishi. The Examiner's rejection is on pages 8 and 9 of the Answer.

ISSUE

Rejection of claims 1 through 11, and 18 through 22

Appellant argues that the combination of Mosher and Gourraud does not teach presenting on the wireless handset choices of indicating

² Throughout the opinion we refer to the Answer mailed October 31, 2007.

transmission modes for streaming media content based on one presentation capability of the wireless handset. Brief³ page 7.

Thus, Appellant's contentions present us with the issue: did the Examiner err in finding that the combination of Mosher and Gourraud teach presenting choices for transmission mode as claimed.

Rejections of claims 24 and 25

Appellant's arguments directed to the rejections of these claims assert that the additional teachings of Iida and Oishi do not make up for the deficiencies noted in the rejection of independent claim 22.

Thus, Appellant's contentions with respect to the rejections of claims 24 and 25 present us with the same issue as discussed above with respect to the rejection of claims 1 through 11 and 18 through 22.

FINDINGS OF FACT

Mosher

1. Mosher teaches organizing various multimedia services and allowing the user to select a desired multimedia service. Abstract.
2. The various multimedia is organized in a framework of mode and theme which is used to allow the user to select a multimedia service. These options are presented in a GUI to the user. Paras 0023-0037, 0080.
3. Figures 4A through 4D depict screen shots of the GUI. Para 0020.

³ Throughout the opinion we refer to the Brief filed Aug. 24, 2007 and the Reply Brief filed December 28, 2007.

4. Mosher's teaching can be used in many types of electronic devices.
Para. 0039.

Gourraud

5. Gourraud teaches a system to provide program on demand service via a telecommunication device. The telecommunications provider determines the service provider which stores the program and establishes a session to stream the selected program. Abstract.
6. Using Gourraud's system, the user first selects the program to be viewed or listened to and then the service provider containing the program is contacted to transmit the program. Para. 0032.

PRINCIPLES OF LAW

In analyzing the scope of the claim, Office personnel must rely on Appellant's disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word *in* a claim is not to be confused with adding an extraneous limitation appearing in the specification, which is improper." (Emphasis original) *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348 (Fed. Cir. 2002) (citations and quotations omitted).

ANALYSIS

Claims 1 through 11, 18 through 21

Appellant's contentions have persuaded us that the Examiner's rejection of claims 1 through 11 and 18 through 21 under 35 U.S.C. § 103(a) as being unpatentable over Mosher and Gourraud is in error. Independent

claim 1 recites “presenting on the wireless handset a set of choices indicating transmission modes for streaming media content to the wireless handset” wherein a mode is selected, a list of media content compatible with the mode is received at the handset for the user to select the media to be streamed using the selected mode. Independent claims 18 and 19 recite similar limitations. Appellant asserts that the term “transmission mode” should be interpreted as described in the Specification on page 9 as “[a] transmission mode generally specifies parameters used to send media content to the wireless handset.” Brief 8. We concur with Appellant’s proffered interpretation of the term.

In rejecting independent claims 1, 18, and 19 the Examiner finds that:

Gourraud teaches receiving the set of choices is tailored based on at least one presentation capability of the wireless handset (“viewed or listened” see [0032] and [0038]); and receiving a list of available media contents wherein all media content in the list of available media content is compatible with the indicated transmission mode (fig. 7 see [0038]-[0044]). . . .

Answer 4. Further, in response to the argument that Gourraud’s teaching of a list that includes different media types (e.g. video and audio) does not meet the claimed selecting a mode, the Examiner states “the reference only need to show ‘view’ as the presentation capability of the terminal[]]. Appellant specifies ‘a transmission mode’ as ‘video only, audio only.’” Answer 11. While we concur with the Examiners’ finding that Gourraud teaches that a user can select media content from a mobile device including audio only or video only (Fact 6), we do not find that this meets the claimed selection of a transmission mode as claimed. As discussed above, the claimed method involves the user making a selection of the transmission mode (per the

Examiner's findings video only or audio only). The claim further recites that from this selection a list of media content is presented and based upon a further user selection, of media content from the list, a program is streamed to the device. The findings of Gourraud show that the user selects media which may be of different modes but does not show that the user selects the modes before the list of media is presented to the user. The Examiner has not found, nor do we find, that the teachings of Mosher teach this feature. Thus, Appellant's arguments have persuaded us of error in the Examiner's finding that the combination of Mosher and Gourraud teaches presenting choices for transmission mode as claimed in independent claims 1, 18, and 19, and claims 2 through 11 and 20 which depend upon these independent claims.

Claim 22

Independent claim 22 differs from claims 1, 18, and 19 in that a list of media content is provided to the user, based upon the selection of media content, a list of transmission modes for the user selected media content is provided to the user, and then the media content is presented based upon the selected mode. The Examiner's rationale to reject claim 22 is the same as applied to claims 1, 18, and 19. Answer 3. As discussed above, we concur with the Examiner's finding that Gourraud teaches presenting the user with a selection of media, some of which is of different type. However, we do not find that the combination of Mosher and Gourraud teaches that the user is presented with a selection of transmission modes. Accordingly, we will not sustain the Examiner's rejection of independent claim 22.

Rejections of claims 24 and 25

Claims 24 and 25 depend upon claim 22. As discussed *supra* Appellant's arguments have persuaded us that the Examiner erred in finding that the combination of Mosher and Gourraud teaches presenting choices for transmission mode as claimed. The Examiner has not found, nor do we find that the additional teachings of Iida and Oishi teach this feature. Accordingly, we will not sustain the Examiner's rejections of claims 24 and 25 for the reasons discussed with respect to claim 22.

ORDER

The decision of the Examiner is reversed.

REVERSED

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